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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

JOSE L. ACOSTA, JR., ROBERT  
RANDALL, and BERTRAM  
ROBISON, individually, and on  
behalf of all other similarly  
situated,

Plaintiffs,

v.

TRANS UNION, LLC, and Does 1  
to 10, inclusive

Defendants.

CASE NO.: CV06-5060 DOC (MLGx)

JUDGE: David O. Carter

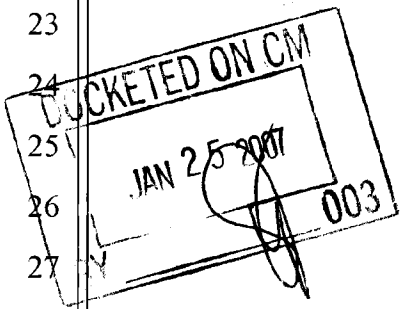
**CLASS ACTION**

**ACOSTA PLAINTIFFS' OBJECTION  
TO: DECLARATION OF CHARLES  
JUNTIKKA IN SUPPORT OF  
WHITE/HERNANDEZ PLAINTIFFS'  
OPPOSITION TO THE ACOSTA/PIKE  
PLAINTIFFS' MOTION FOR AN  
ORDER GRANTING PRELIMINARY  
APPROVAL OF SETTLEMENT**

ALL RELATED ACTIONS

(Filed concurrently with:

1. Acosta's Reply In Support of Motion for an Order Granting Preliminary Approval of Settlement;
2. Acosta's Request for Judicial Notice;
3. Supplemental Declaration of Lee A. Sherman in support of Reply;
4. Declaration of Douglas A. Wright in support of Reply;
5. Supplemental Declaration of Peter L. Recchia in support of Reply;
6. Declaration of Gino P. Pietro in support of Reply;



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U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

FILED

1 ) 7. Declaration of David A. Clare in support  
 2 ) of Reply;  
 3 ) 8. Objection to Declaration of Diane  
 4 ) Karpman;  
 5 ) 9. Objection to Declaration of David A.  
 6 ) Szwak;  
 7 ) 10. Objection to Declaration of Geoffrey  
 8 ) Miller;  
 9 ) 11. Objection to Declaration of Jay  
 10 ) Westbrook;  
 11 ) 12. Objection to Declaration of Geoffrey  
 12 ) Hazard;  
 13 ) 13. Objection to Declaration of John  
 14 ) Ulzheimer; and  
 15 ) 14. Proof of Service  
 16 )  
 17 ) **DATE: January 22, 2007**  
 18 ) **TIME: 8:30 a.m.**  
 19 ) **DEPT: Courtroom 9D**

13  
 14 COME NOW, Plaintiffs, Jose L. Acosta, Jr., Robert Randall, Bertram  
 15 Robison and Kathryn Pike (jointly referred to herein as “Acosta”) and respectfully  
 16 submit their objections to the Declaration of Charles Juntikka submitted by the  
 17 *White/Hernandez* Plaintiffs in opposition to Acosta’s motion for preliminary  
 18 approval of the class action settlement.

19 **A. GENERAL OBJECTIONS**

20 1. Juntikka’s survey and his testimony based thereon are inadmissible as  
 21 they do not meet the *Daubert* standards or the requirements of Rule 702. While  
 22 the *White/Hernandez* plaintiffs have not specifically offered Juntikka as an  
 23 “expert” (he is one of the co-counsel on the *White/Hernandez* matters), his attempt  
 24 to conduct an admissible “survey” and to have he and the other *White/Hernandez*  
 25 “experts” rely on it brings his testimony and his survey within the purview of Rule  
 26 702.

27 Under the rule, expert testimony is admissible under the following  
 28 conditions: “[i]f scientific, technical, or other specialized knowledge will assist the

1 trier of fact to understand the evidence or to determine a fact in issue, a witness  
2 qualified as an expert by knowledge, skill, experience, training, or education, may  
3 testify thereto in the form of an opinion or otherwise, if (1) the testimony is based  
4 upon sufficient facts or data, (2) the testimony is the product of reliable principles  
5 and methods, and (3) the witness has applied the principles and methods reliably to  
6 the facts of the case.” (Fed. R. Evid. 702.) Trial judges act as gatekeepers by  
7 independently evaluating the admissibility of expert opinion testimony for  
8 reliability and relevancy. (*Kumho Tire Co., Ltd. v. Carmichael* 526 U.S. 137, 152  
9 (1999); *Stecyk v. Bell Helicopter Textron, Inc.* 295 F.3d 408, 415 fn. 3 (2002).)

10 In *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579 (1993), the  
11 United States Supreme Court set forth a non-exclusive checklist for trial courts to  
12 use in assessing the reliability of scientific expert testimony. The specific factors  
13 cited by the Court in *Daubert* are: (1) whether the expert's technique or theory can  
14 be or has been tested--that is, whether the expert's theory can be challenged in  
15 some objective sense, or whether it is instead simply a subjective, conclusory  
16 approach that cannot reasonably be assessed for reliability; (2) whether the  
17 technique or theory has been subject to peer review and publication; (3) the known  
18 or potential rate of error of the technique or theory when applied; (4) the existence  
19 and maintenance of standards and controls; and (5) whether the technique or theory  
20 has been generally accepted in the scientific community. The burden for  
21 admission of the expert testimony is on the party offering the testimony and its  
22 admissibility must be shown by a preponderance of the evidence. (*Allison v.*  
23 *McGhan Med. Corp.* 184 F.3d 1300, 1306 (11th Cir. 1999).)

24 “[T]o qualify as ‘scientific knowledge,’ an inference or assertion must be  
25 derived by the scientific method.” (*Daubert*, 509 U.S. at 591; *Hose v. Chicago*  
26 *Northwestern Transp. Co.*, 70 F.3d 968, 973 (8th Cir. 1995) [scientific knowledge  
27 is knowledge grounded “in the methods and procedures of science”]; *Metabolife*  
28 *Int’l, Inc. v. Wornick*, 264 F.3d 832, 841 (9th Cir. 2001) [“focus is on principles

1 and methodology, not conclusions”].) Expert testimony based on technical  
2 knowledge is governed by the same concerns and criteria as the admission of  
3 expert testimony based on scientific knowledge. (Fed. R. Evid. 702; *Kumho Tire*  
4 *Co., Ltd.*, 526 U.S. at 147-148; *Walker v. Soo Line R.R. Co.*, 208 F.3d 581, 590  
5 (7th Cir. 2000)] Thus, when considering the admissibility of testimony based on  
6 technical knowledge, courts must determine whether the testimony has a reliable  
7 basis in the knowledge and experience of the relevant discipline. (*Kumho Tire Co.,*  
8 *Ltd.*, 526 U.S. at 149; *Cooper v. Carl A. Nelson & Co.*, 211 F.3d 1008, 1020-1021  
9 (7th Cir. 2000) Whether a particular person has sufficient expertise to testify as an  
10 expert witness depends upon the facts of the particular case, the questions  
11 propounded to the witness, and the witness’ specific qualifications. (*Jones v.*  
12 *Lincoln Elec. Co.*, 188 F.3d 709, 723 (7th Cir. 1999); *Smelser v. Norfolk Southern*  
13 *Ry. Co.*, 105 F.3d 299, 303 (6th Cir. 1997) [when making preliminary finding re  
14 expert’s qualifications “not. . . in the abstract, but whether those qualifications  
15 provide a foundation for a witness to answer a specific question”]; See e.g. *Jinro*  
16 *America Inc. v. Secure Investment, Inc.*, 266 F3d 993, 1004-1006, amended 272  
17 F3d 1289 (9th Cir. 2001) (professional investigator was not qualified to testify as  
18 an expert on Korean business culture and currency practices). A witness who is  
19 eminently qualified to express an opinion in a particular field may be unqualified  
20 to express an opinion in some other related field. (See *Deasy v. United States*, 99  
21 F3d 354, 358 (10th Cir. 1996); *Cummins v. Lyle Industries*, supra, 93 F3d at 365-  
22 366.)

23 In this case, Juntikka offers opinions based on his “survey” of selected credit  
24 reports of certain of his clients, which he and his staff prepared for purposes of this  
25 litigation. However, data collected in this fashion is not generally deemed reliable.  
26 (See *Mono v. Orr* (5<sup>th</sup> Cir. 2000) 200 F.3<sup>rd</sup> 291, 301-302 – expert’s reliance on  
27 data compiled by plaintiffs gave rise to “common sense skepticism”; see also  
28 *United States v. Marine Shale Processors* (5<sup>th</sup> Cir. 1996) 81 F.3<sup>rd</sup> 1361, 1370 –

1 financial incentives of litigation may pose a risk to the objectivity and neutrality of  
2 the person gathering the data “such that the data would not normally be considered  
3 reliable). Moreover, nowhere in his declaration does he offer any testimony  
4 establishing his credentials for designing, implementing or analyzing an acceptable  
5 survey. He offers no qualifications in statistics, statistical analysis, industrial and  
6 organizational psychology, mathematics or any other field that may qualify him to  
7 do so. He further offers no evidence regarding any protocols, nor does he even  
8 describe what specific analyses were performed or how he and his staff determined  
9 what analyses to perform.

10 For example, they discuss the amount of credit reports that would allegedly  
11 not be “fixed” if the settlement was approved, but there is no discussion of what  
12 percentage of the total inaccurate trade lines on the credit reports would be fixed  
13 or, for that matter, what that percentage would increase to if the consumers utilized  
14 the new reinvestigation procedures which shift the default to the benefit of the  
15 consumer. He offers no explanation for why the survey samples vary from issue to  
16 issue or paragraph to paragraph in his declaration and worse yet, he notes that  
17 “paralegals” working for he and his team are the ones that actually performed the  
18 review, but gives no descriptions of their protocols or assignments, no description  
19 of the time frame involved, no actual back up data to support the effort and no  
20 description of their qualifications to perform such an analysis.

21 Further, Juntikka offers no evidence to support his methodology or the  
22 statistical significance of his samples either in terms of the national class or the  
23 number of class members or even the kinds of debts involved. In fact, given the  
24 more than ten million putative class members in this case, Juntikka’s sample sizes  
25 of approximately 900 of his clients each for Trans Union and Equifax is an  
26 infinitesimally small group (less than 1/100<sup>th</sup> of 1 percent) that does not even  
27 approach anything statistically significant or scientifically acceptable.

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1 The aforementioned facts establish that Juntikka's survey did not employ the  
2 accepted techniques, methods and safeguards of actual statistical experts. His  
3 methodology was not subjected to peer review and he offers nothing about error  
4 rates or variables in his data and no information establishing that his sample  
5 population is actually reflective of the class populous. Hence, the survey and his  
6 testimony based thereon must be excluded.

7 2. The declaration of Juntikka should be excluded on the basis that neither  
8 Acosta nor the settling defendants were afforded a timely opportunity to cross-  
9 examine him with regard to his testimony, qualifications or bias. Namely, unlike  
10 Acosta, who produced their expert on less than a week of notice (and produced all  
11 documents related to the expert *though the stipulation negotiated between the*  
12 *parties relating to the deposition of experts did not require them to do so*), the  
13 *White/Hernandez* plaintiffs have refused to timely produce Juntikka for deposition,  
14 refused to produce any documents relating to their retention and communications  
15 with Juntikka and have attempted to hide behind the earlier stipulation as a means  
16 to prevent equal and full disclosure on these important topics. Without a fair  
17 opportunity to cross-examine Juntikka prior to filing their reply papers, Acosta  
18 (and the settling defendants) will be severely prejudiced. Thus, the court should  
19 exercise its discretion and exclude the testimony of Juntikka from its consideration  
20 on Acosta's motion for preliminary approval of the settlement. (*Barrett v. Atlantic*  
21 *Richfield Co.* 95 F.3<sup>rd</sup> 375).

22 **B. SPECIFIC OBJECTIONS**

23 1. Paragraphs 3- 4: Relevancy; Foundation; Inappropriate opinion  
24 testimony from lay witness: Mr. Juntikka's professional credentials are not relevant  
25 because he does not qualify as an expert nor is his research reliable, which forms  
26 the basis of his lay "opinions" as they were prepared for litigation and are therefore  
27 biased. *Daubert*, 43 F.3d at 1317.

28 ///

1       Moreover, Mr. Juntikka's statements are offered in an attempt to lay a  
2 foundation for inappropriate lay witness testimony and are therefore objectionable.  
3 [FRE 701(c); *United States v. Peoples*, 250 F.3d 630, 639-42 (8<sup>th</sup> Cir. 2001)]

4       2. Paragraph 5: Hearsay; Relevancy; Foundation: Juntikka references  
5 hearsay statements attributed to his clients. [FRE 801(c)] Moreover, his testimony  
6 on this issue does not tend to prove or disprove any fact pertinent to this matter and  
7 therefore, is not relevant. [FRE 401]. And, there is either inadequate foundation or  
8 no foundation whatsoever for Mr. Juntikka's conclusions.

9       3. Paragraph 6: Hearsay; Relevancy; Foundation: Juntikka references  
10 hearsay statements attributed to his clients. [FRE 801(c)] Moreover, his testimony  
11 on this issue does not tend to prove or disprove any fact pertinent to this matter and  
12 therefore, is not relevant. [FRE 401]. And, there is either inadequate foundation or  
13 no foundation for Mr. Juntikka's conclusions.

14       4. Paragraph 7: Hearsay; Relevancy; Foundation: Juntikka references  
15 hearsay statements. [FRE 801(c)] Moreover, his testimony on this issue does not  
16 tend to prove or disprove any fact pertinent to this matter and therefore, is not  
17 relevant. [FRE 401] And, there is either inadequate foundation or no foundation for  
18 Mr. Juntikka's conclusions.

19       5. Paragraph 10: Lacks foundation; Speculation; Relevancy [FRE 401];  
20 Inappropriate Lay Opinion Testimony [FRE 701]: Juntikka does not provide a  
21 proper foundation for the statements contained herein. Moreover, his statements  
22 are speculative and not relevant in that they do not tend to prove or disprove any  
23 fact pertinent to this matter.

24       Moreover, this evidence is objected to on the grounds that it is an attempt to  
25 introduce inappropriate Lay Opinion Testimony [See paragraph 1 above] [FRE 701  
26 and *Peoples*, 250 f.3D AT 639-42]

27       6. Paragraph 11: Relevancy [FRE 401]: This does not tend to prove or  
28 disprove any fact pertinent to this matter.



1       7. Paragraph 12: Relevancy [FRE 401]: This does not tend to prove or  
2 disprove any fact pertinent to this matter.

3       8. Paragraph 13: Speculation; Foundation; Relevancy [FRE 401]: This  
4 statement in its entirety should be stricken because it does not tend to prove any  
5 fact pertinent to this matter. Moreover, Juntikka is speculating as to what his  
6 clients knew and he fails to provide proper foundation for his statistics.

7       9. Paragraph 14: Relevancy [FRE 401]; Foundation; Inappropriate Lay  
8 Opinion Testimony [FRE 701]: These statements do not tend to prove or disprove  
9 any fact pertinent to this matter and therefore, are not relevant. Moreover, there is  
10 either inadequate foundation or no foundation offered whatsoever to support Mr.  
11 Juntikka's conclusions as stated herein. And, the statements contained herein are  
12 objectionable as inappropriate Lay Opinion Testimony. [See Discussion above in  
13 paragraph 1]

14       10. Paragraph 15: Relevancy [FRE 401]; Legal Conclusion; Foundation.  
15 Inappropriate Lay Opinion Testimony [FRE 701]: These statements are not  
16 relevant as they do not tend to prove or disprove any fact pertinent to this matter.  
17 They also call for a legal conclusion as to whether or not "The credit reporting  
18 agencies denial of the benefits of the bankruptcy discharge order was a violation of  
19 the FCRA" and is further objectionable in that it offers no foundation to support  
20 said opinions. And, like much of this declaration, it includes statements which are  
21 offered as inappropriate Lay Opinion Testimony. [FRE 701]

22       11. Paragraph 16: Relevancy [FRE 401]: This does not tend to prove or  
23 disprove any fact pertinent to this matter.

24       13: Paragraphs 18-19: Foundation; Hearsay [FRE 801(c)]; Inappropriate  
25 Lay Opinion Testimony [FRE 701]: Juntikka does not establish the proper  
26 foundation or reliability for offering these statistics into evidence. [See General  
27 Objections] Moreover, the statements are objected to because they are based upon  
28 hearsay testimony from his clients and their credit reports. [FRE 801(c)] These



1 statements are also objected to on the grounds that they are inappropriate Lay  
2 Opinion Testimony. [FRE 701- see above]

3 14. Paragraph 20: Foundation; Hearsay [FRE 801(c)]; Inappropriate Lay  
4 Opinion Testimony [FRE 701]: Juntikka does not establish the proper foundation  
5 or reliability for offering these statistics into evidence. [See General Objections]  
6 Moreover, the statements are objected to because they are based upon hearsay  
7 testimony from his clients and their credit reports. [FRE 801(c)] These statements  
8 are also objected to on the grounds that they are inappropriate Lay Opinion  
9 Testimony. [FRE 701- see above]

10 15. Paragraph 21: Foundation; Inappropriate Lay Opinion Testimony [FRE  
11 701]: Juntikka does not establish the proper foundation or reliability for offering  
12 these statistics. Further, Acosta incorporates herein by reference the objections  
13 asserted above with regard to Juntikka's ability to present his "survey" evidence.

14 Moreover, this testimony is inappropriate Lay Opinion Testimony and is  
15 therefore objectionable. [FRE 701- see above]

16 16. Paragraphs 22-23: Foundation; Inappropriate Lay Opinion Testimony  
17 [FRE 701]; Hearsay [FRE 801(c)]: Juntikka does not establish the proper  
18 foundation or reliability for offering these statistics. Further, Acosta incorporates  
19 herein by reference the objections asserted above with regard to Juntikka's ability  
20 to present his "survey" evidence.

21 Moreover, this testimony is inappropriate Lay Opinion Testimony and is  
22 therefore objectionable. [FRE 701- see above] And, is objected to because the  
23 statements are based upon hearsay testimony from his clients and their credit  
24 reports. [FRE 401]

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1 DATED: January 7, 2007

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